

Report of the Chief Executive

**18/00441/FUL
CHANGE OF USE FROM RETAIL (CLASS A1) TO AN ADULT GAMING
CENTRE (SUI GENERIS)
62 NOTTINGHAM ROAD, EASTWOOD, NOTTINGHAM, NG16 3NQ**

Councillor M Radulovic has requested this application be determined by Planning Committee.

1 Details of the application

1.1 This is a full application seeking consent to change the use of the ground floor of the building to an adult gaming centre (Sui Generis). The last known use of the building was for an A1 retail use (clothes shop).

1.2 In addition to the proposed plans, the following information has been submitted in support of the application:

- The intended opening hours will be 9am to 9pm Monday – Sundays including Bank Holidays,
- A total of 5 part time members of staff will be employed,
- Approximately 37 machines will be on site,
- All machines are classified as Category D – B3 as per the Gambling Commission classifications. All machines will be fruit machines,
- All machines are volume adjustable and will be set accordingly. Machines will not be on loud as there is no requirement due to the nature of the establishment,
- Any music will be set at a low background noise level,
- The minimum legal age for entry into the premises is 18, although a Challenge 21 system will be operated to ensure no entry is permitted to anyone under the age of 18, which is strictly enforced by the Gambling Commission,
- Zero tolerance is operated to any form of trouble and there would be no hesitation in banning or reporting individuals if necessary.

2 Site and Surroundings



Front elevation of building

- 2.1 The application site is located within Eastwood Town Centre and the Eastwood Conservation Area.
- 2.2 The building is located within the centre of a row of two storey properties, with commercial uses at ground floor level and residential flats above.
- 2.3 To the east of the application site there is a retail unit which is currently in use as a card shop and to the west there is an estate agents.

3 Relevant Planning History

- 3.1 07/01043/FUL – in 2007 planning permission was granted for the construction of 3 new shop fronts.
- 3.2 07/1044/FUL – in 2007 planning permission was granted for alterations and extension to provide 3 new flats (creating 12 in total) and rear car parking.
- 3.3 08/00498/FUL – in 2008 planning permission was refused for the refurbishment of existing shop fronts, including cornice and fascia details and the installation of roller shutters.
- 3.4 09/00159/FUL – in 2009 planning permission was granted for the construction of new shop fronts including the repositioning of external roller shutters. This was a revised scheme.
- 3.5 10/00377/FUL – in 2010, retrospective planning permission was granted for the retention of roller shutters and alterations to shop fronts.

4 Policy Context

4.1 **National policy**

4.1.1 The National Planning Policy Framework (NPPF) July 2018, outlines a presumption in favour of sustainable development, that planning should be planned, decisions should be approached in a positive and creative way and high quality design should be sought.

4.1.2 Section 7 (Ensuring the vitality of town centres), paragraph 85, requires LPA's to define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses and reflects their distinctive characters.

4.1.3 Section 16 (Conserving and enhancing the historic environment), paragraph 189, states that in determining applications, LPA's should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting.

4.2 **Broxtowe Aligned Core Strategy**

4.2.1 The Council adopted the Core Strategy (CS) on 17 September 2014.

4.2.2 'Policy A: Presumption in Favour of Sustainable Development' reflects the presumption in favour of sustainable development contained in the NPPF. Applications which accord with the Local Plan will be approved without delay unless material considerations indicate otherwise.

4.2.3 Policy 6: Role of Town and Local Centres: The vitality and viability of all centres will be maintained and enhanced, including widening the range of uses, whilst maintaining a strong retail character. Main town centre uses should be located in centres and should be appropriate in scale and nature to the role and function of the centre.

4.2.4 Policy 10: Design and Enhancing Local Identity states that development should be assessed in relation to a number of factors including its impact on the amenity of nearby residents.

4.2.5 Policy 11: The Historic Environment states that proposals and initiatives will be supported where the historic environment and heritage assets and their settings are conserved and/or enhanced in line with their interest and significance.

4.3 **Saved Policies of the Broxtowe Local Plan**

4.3.1 The Part 2 Local Plan is currently awaiting Examination hearing sessions. Until adoption, Appendix E of the Core Strategy confirms which Local Plan policies are saved. Relevant saved policies are as follows:

4.3.2 Policy S1: Shopping and Associated Uses within Town Centres. This policy allows for the granting of planning permission for A1, A2 and A3 uses within

centres provided that they do not have an unacceptable impact on neighbouring uses, or on the vitality and viability of the Town Centre.

- 4.3.3 Policy S4: Prime Shopping Frontages. This policy seeks to retain A1 uses at ground floor level within the prime shopping frontage.
- 4.3.4 Policy K4: Town centres. This policy seeks to maintain the role of town centres as the focus for shopping, employment, social, community and leisure uses through the provision of appropriate new development.
- 4.3.5 Policy E34: This policy states planning permission will not be granted for noise-sensitive development if occupants, even with appropriate mitigation measures, would experience significant noise disturbance.

4.4 Part 2 Local Plan (Draft)

- 4.4.1 The Part 2 Local Plan includes site allocations and specific development management policies. The draft plan has been submitted for Examination, with examination hearing sessions currently anticipated to take place toward the end of this year. The representations on the plan included 7 no. representations in relation to Policy 10 and 11 no. representations in relation to policy 17. Given that there remain outstanding objections to Policies 10 and 17 that will need to be considered through the Local Plan examination process, these policies can be afforded only limited weight.
- 4.4.2 Policy 10: Town Centre and District Centre Uses. This policy builds upon the above mentioned policies and states planning permission will only be granted for development which comprises another town centre use provided the class does not result in over 50% of the primary shopping frontage falling within a class other than A1.
- 4.4.3 Policy 17: Place-making, design and amenity. This policy states that permission will be granted for development which meets a number of criteria (where relevant) including that it integrates into its surroundings, provides, or is close to community facilities, has good access to public transport, provides sufficient, well-integrated parking and ensures satisfactory standards of amenity for existing residents.

5 Consultations

- 5.1 The Council’s Environment Health Officer has no objection subject to a condition relating to no sound reproduction or amplification equipment being installed or operated on site.
- 5.2 The Council’s Conservation Officer has no objection on the basis that no external alterations are proposed to take place.
- 5.3 Nottinghamshire County Council Highways advise that they have no observations to make on the application.
- 5.4 The Council’s Town Centre and Regeneration Officer has no objections and advises the Council must consider other uses which do not meet the traditional

A1 usage. The proposal complements this new approach to keeping town centres relevant with no focus on preserving areas as traditional shopping only. By permitting the proposed change of use to Sui Generis, this would reduce the amount of A1 use class units in the retail Prime Frontage area to 58%, which is a surplus in line with the proposed Part 2 Local Plan. There are also multiple vacant property alternatives, varying in size and currently able to accommodate an A1 use. All are priced within what could be considered a fair and comparable sub market rent tolerance, and therefore there is no real danger to attracting new A1 businesses by reducing the current A1 units by permitting this change.

5.5 23 neighbouring properties were consulted on the application. A site notice was also displayed. During the course of the application, 2 letters have been received raising concerns in respect of associated noise and disturbance from the gaming machines.

6 Appraisal

6.1 The main issues relating to this application are the principle of development, any harm upon the character of the Conservation Area and the potential impact upon amenity by reason of noise. These are discussed in turn as follows:

6.2. Principle of Development

6.2.1 The application site is located along the main busy through route within the shopping area of Eastwood Town Centre. Along with the retail uses within the town centre, there are also a variety of office and social/food and drink uses. The unit has been vacant for a period of time (length unknown), with the last known use being A1 retail (clothes shop).

6.2.2 Under saved policy S4 it is still relevant to assess whether the loss of such a use could affect the prime shopping frontage. This is further enhanced with policy 10 - Town Centre and District Centre Uses of the Draft Part 2 Local Plan which states planning permission will only be granted for development which comprises another town centre use provided the class does not result in over 60% of the primary shopping frontage falling within a class other than A1. However, only limited weight can be attached to this policy.

6.2.3 The Council's Town Centre and Regeneration Officer has no objections and advises Part 3 of the Council's Economic Regeneration Strategy identifies the following:

"It should also be recognised that the role of the town centre is evolving with a long-term structural shift away from retail dominated provision to services of all types, but especially leisure (e.g. bars, cafés, entertainment) and a continued rationalisation of non-sustainable retail spaces." "It is unlikely that Eastwood, Stapleford and Kimberley will be able to compete as a destination purely for a retail visitor market."

6.2.4 It is understood that within the prime shopping frontage along Nottingham Road the proportion of A1 units is already below two thirds, and therefore any further reduction would be contrary to Policy S4 of the adopted 2004 Local Plan.

Eastwood Town Centre as a whole is thriving and even with the loss of this retail unit, the town centre still has an adequate A1 retail offering in line with the Part 2 Local Plan Policy, with a healthy level of occupancy of 58% A1 uses within the prime retail frontages. In addition, there is also capacity to accommodate further A1 retail uses through the re-occupancy of vacant units. Whilst it is acknowledged that saved policy S4 aims to prevent prime shopping frontages losing more than a third of A1 retail units, this policy was adopted 14 years ago and since this time the modern retail offer and shopping habits have changed the attraction of town centres for business premises.

- 6.2.5 It is advised the Council must consider other uses which do not meet the traditional A1 usage. The proposal complements this new approach to keeping town centres relevant with no focus on preserving areas as traditional shopping only areas. There are also multiple vacant property alternatives, varying in size and currently able to accommodate an A1 use. All are priced within what could be considered a fair and comparable sub market rent tolerance, and therefore there is no harm caused to attracting new A1 businesses by reducing the number of A1 units by permitting this change, and reducing the current A1 offer by one unit.
- 6.2.6 In addition, Section 7 of the NPPF 2018 - Ensuring the vitality of town centres, paragraph 85, requires LPA's to define a network and hierarchy of town centres and promote their long-term vitality and viability, by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allowing a suitable mix of uses and reflecting their distinctive characters. In view of the above, it is considered that there are insufficient grounds to refuse the principle of development on the loss of an A1 retail unit causing harm to the vitality of the prime shopping frontage, given the change of use will be incorporating a town centre use in the form of a leisure opportunity. The principle of the change of use is therefore acceptable.

6.3 Impact upon the Character of the Conservation Area

- 6.3.1 The building and the surrounding premises were built circa 1900's and are located within the Eastwood Conservation Area. The building consists of a traditional shop front, with black perforated roller shutters.
- 6.3.2 In support of the application, a Heritage Statement has been submitted which states that there will be no changes or disruption to the internal layout or external elevations of the premises.
- 6.3.3 The Council's Conservation Officer has no objection to the proposal on the basis that no external alterations are proposed to take place. It is considered that the change of use would not cause any significant harm to the character of the Conservation Area.

6.4 Amenity

- 6.4.1 Concerns have been received from neighbouring commercial units in respect of potential associated noise and disturbance from the gaming machines.

- 6.4.2 Whilst the premises are attached to the commercial building located to the east, there is a gap between the walls serving the building and the neighbouring property. There are also residential units situated directly above the premises.
- 6.4.3 In support of the application, the applicant has stated that all machines are volume adjustable and will be set accordingly. In addition, the machines will not be loud as there is no requirement due to the nature of the establishment, i.e. the location is not a seaside family amusement arcade where machines would be loud to attract passing trade. The premises would be open between the hours of 9am to 9pm, 7 days a week including Bank Holidays. This is considered acceptable within a town centre location and there are other uses within close proximity of the application site which could potentially create a greater noise nuisance.
- 6.4.4 The Council’s Environmental Health Officer offers no objection to the proposal subject to a condition requiring no sound reproduction or amplification equipment being installed or operated on site. Any statutory noise nuisance could be addressed through Environmental Health legislation.
- 6.4.5 Overall the proposal constitutes a town centre use where the amenity of neighbouring properties would not be adversely affected. It is considered that any noise or activity generated would not be significantly greater than could be expected within a town centre, and that the use can be appropriately controlled by conditions to ensure it is acceptable in this area.

7 Conclusion

- 7.1 It is considered that, having regard to the relevant policies of the Development Plan, National Planning Guidance and to all other material considerations, the development is acceptable and that there are no circumstances which otherwise would justify the refusal of permission.

Recommendation

The Committee is asked to RESOLVE that planning permission be granted subject to the following conditions:

- 1. The development hereby permitted shall be commenced before the expiration of three years beginning with the date of this permission.**
- 2. The development hereby permitted shall be carried out in accordance with the Site Location Plan 1: 1250 received by the Local Planning Authority on 25 June 2018 and Proposed Floor Plan received by the Local Planning Authority on 02 July 2018.**
- 3. The adult gaming centre business hereby approved shall only be open to customers during the following times: 09.00 – 21.00 Mondays – Sundays and Bank Holidays.**

4. **No sound reproduction or amplification equipment (including public address systems, loudspeakers etc.) shall be installed or operated at the site.**

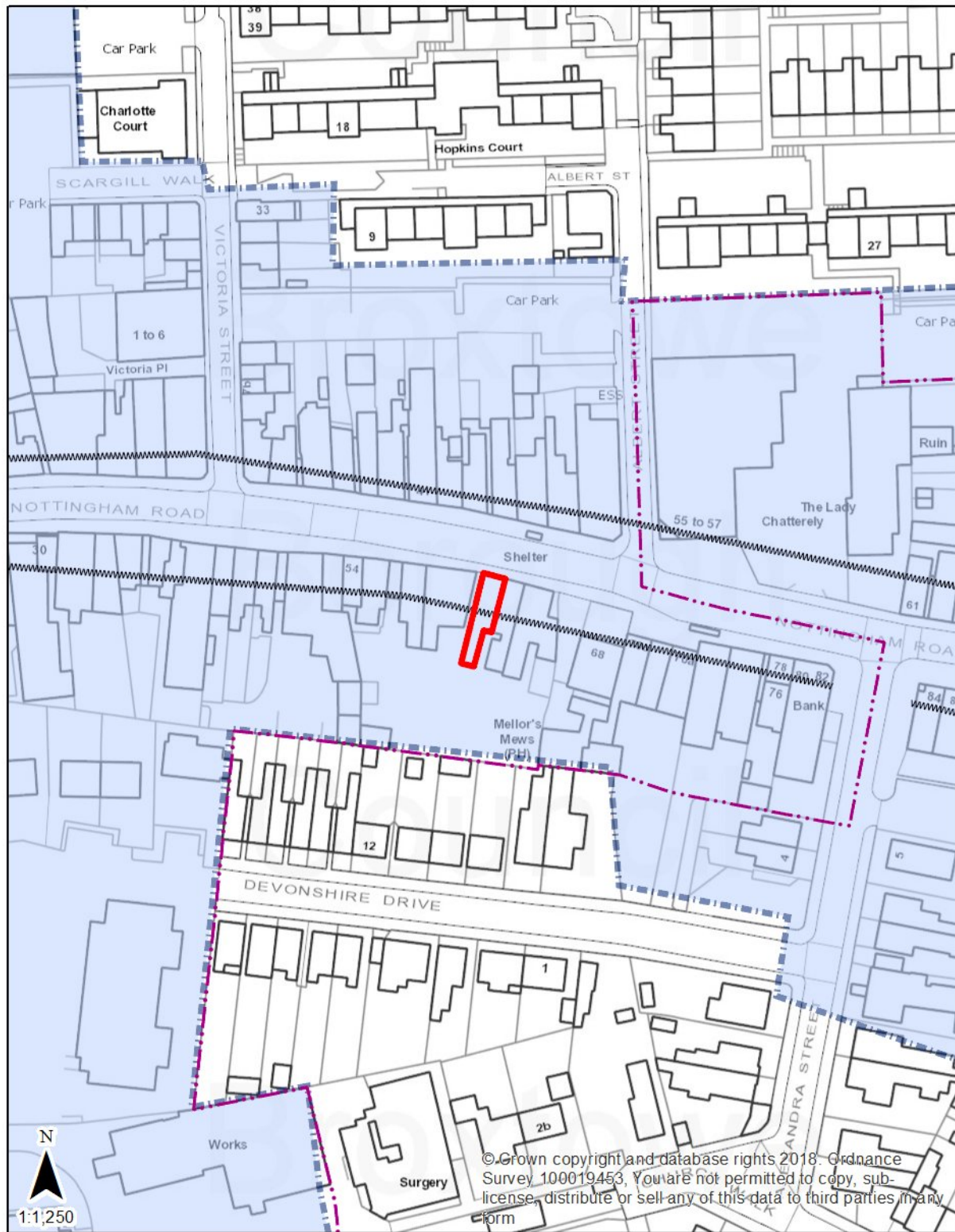
Reasons

1. **To comply with S91 of the Town and Country Planning Act 1990 as amended by S51 of the Planning and Compulsory Purchase Act 2004.**
2. **For the avoidance of doubt.**
3. **To protect nearby residents from excessive operational noise.**
4. **To protect nearby residents from excessive amplified noise, in accordance with Policy E34 of the Local Plan 2004.**

Note to applicant

The Council has acted positively and proactively in the determination of this application by communicating with the applicant throughout the course of the application.

Background papers
Application case file



Legend

- Site
- Prime shopping frontages
- Conservation Areas (Local Plan)
- Town centre